

STATE OF MICHIGAN
COURT OF APPEALS

In re D. PATTERSON, Minor.

UNPUBLISHED
September 10, 2015

No. 326447
St. Joseph Circuit Court
Family Division
LC No. 2013-000770-NA

Before: BOONSTRA, P.J., and MURPHY and MARKEY, JJ.

PER CURIAM.

Respondent-father appeals by right the trial court's order terminating his parental rights to the minor child under MCL 712A.19b(3)(g) (failure to provide proper care and custody) and (j) (reasonable likelihood that child will be harmed if returned to the parent). We affirm.

Father and mother were married to each other when the minor child was born. The child was removed from their custody after police found methamphetamine in their house on August 22, 2013. Mother voluntarily released her parental rights to the child on April 24, 2014, and she is not a party to this appeal. All charges against father regarding the August 22, 2013 search were dropped. The minor child lived in foster care after he was removed. Father visited the child approximately three times a week. On February 25, 2015, the trial court terminated father's parental rights to the minor child.

"In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). If the trial court did not clearly err in finding one statutory ground for termination, this Court need not address other grounds on which the trial court based its decision. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009).

With regard to MCL 712A.19b(3)(g), the trial court found that father appeared to have the ability to parent the child and was provided with multiple opportunities to show this, but he refused to take advantage of them. The trial court found that although father could physically provide for the child, he was unable to provide for the child emotionally, and there was no indication that he would be able to do so.

Evidence indicates that father had numerous opportunities to demonstrate that he was able to properly care for the child, but he squandered these opportunities. Lindsay Lash from the Department of Health and Human Services (DHHS)¹ testified that although the foster parents caring for the minor child invited father to visit the child in their home, he did not visit. Between January 23, 2014, and April 17, 2014, father missed half of his scheduled visits. Heather Decastro, father's assigned therapist, reported that father's visits with the child lasted four hours and that father did not ask for more time. Father rarely took advantage of the numerous opportunities he was given to have unsupervised visits with the child. Lash and Decastro repeatedly encouraged father to take the child to his home on weekends and have overnight visits, but father took the child home only three times and never had the child stay overnight with him. Father was resistant to spending more time with the child and to following the advice given by the case worker and others. Additionally, although father interacted well with the child shortly after the child was removed from his custody, the bond between father and the child weakened over time, and father's ability to meet the child's needs deteriorated. Father refused to read to or play games with the child and showed little concern when Lash informed him that the DHHS recommended that his parental rights be terminated. Although father had stable employment, housing, and transportation, it appears that father was unable to meet the child's needs. Indeed, evidence showed father's inability to meet the child's needs worsened over time. Moreover, there was nothing to indicate that father was interested in improving his ability to meet them. Additionally, father failed to fully participate in the services offered to him. Given the facts of record, we conclude that the trial court properly found that father had not provided proper care and custody and could not do so within a reasonable time considering the child's very young age. In sum, we conclude there was no clear error in the trial court's finding that termination was proper under MCL 712A.19b(3)(g). *In re VanDalen*, 293 Mich App at 139. Because one statutory ground for termination was clearly met, we need not address the other ground on which the trial court based its decision. *In re HRC*, 286 Mich App at 461.

In a single sentence in his brief on appeal, father argues that the DHHS failed to make reasonable efforts to reunify him with the child. "When a child is removed from a parent's custody, the agency charged with the care of the child is [usually] required to report to the trial court the efforts made to rectify the conditions that led to the removal of the child." *In re Plump*, 294 Mich App 270, 272; 817 NW2d 119 (2011). "[A trial] court is not required to terminate parental rights if the State has not provided to the family of the child . . . such services as the State deems necessary for the safe return of the child to the child's home." *In re Rood*, 483 Mich 73, 103-105, n 46; 763 NW2d 587 (2009). The adequacy of the petitioner's efforts to provide services may affect whether there is sufficient evidence to terminate a parent's rights. *Id.* at 89.

Father's argument that he did not have the opportunity to show that he could properly care for the child is wholly unsupported by the record. Rather, evidence suggests that father had numerous opportunities to demonstrate that he could provide the child with proper care and

¹ The Department of Human Services initiated this case, but it has since been merged into the newly created Department of Health and Human Services (DHHS). We therefore refer to the newly formed Department in this opinion.

custody, but he did not take advantage of them and showed no interest in doing so. Therefore, father failed to establish plain error with regard to the DHHS's efforts to reunify. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

Father next argues that the trial court's discussion of the child's best interests was inadequate, that Decastro's testimony regarding the "superficial" bond between father and the child conflicted with her prior testimony and that it is unclear which standard of proof the trial court used in determining best interests. "Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012); MCL 712A.19b(5). When considering best interests, the focus is on the child rather than the parent. *In re Moss*, 301 Mich App 76, 87; 836 NW2d 182 (2013). The trial court should consider all available evidence to determine the child's best interests, *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000), and may consider such factors as "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home," *In re Olive/Metts*, 297 Mich App at 41-42 (citations omitted). Other factors that the trial court can consider include how long the child lived in foster care or with relatives, the likelihood that the child could be returned to the parent's home within the foreseeable future, and compliance with the case service plan. *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012). The preponderance of the evidence standard applies to this determination. *In re Moss*, 301 Mich App at 83.

The trial court found that it was in the child's best interests to terminate father's parental rights because there was no appropriate bond between the child and father. And, the trial court found that termination was in the child's best interests because of father's poor parenting ability and lack of ability to provide the child with stability. Although it is true—as father argues—that Decastro reported that there was a strong bond between father and the child shortly after the child was removed from custody, her testimony at the termination hearing that the bond grew superficial did not conflict with her earlier statements because, as discussed, father's relationship with the child deteriorated over time.

In addition, there was ample evidence to support the trial court's finding that termination was in the child's best interests. Lash testified that returning the child to father would make the child a "guinea pig" because there was no way to know whether father could provide proper care. Father's inability to properly interact with the child and father's lack of interest in improving his parenting skills are well-supported by the evidence. Decastro testified that lack of a permanent caregiver could cause the child to develop "aggressive" ways of having its needs met, which could cause the child to struggle later in life. Furthermore, the foster mother testified that the child was thriving in its adoptive-placement home and was "completely at home" there. Therefore, we conclude that the trial court did not clearly err in finding that termination was in the child's best interests. *In re Olive/Metts*, 297 Mich App at 41-42.

Father's argument that the trial court's discussion of the child's best interests was inadequate is without merit. He does not argue that the trial court failed to consider a relevant fact that weighed against a finding of termination being in the child's best interests. As discussed, the trial court found termination was in the child's best interests because of the superficial bond between the child and father, father's inability to provide permanency, and

father's poor parenting skills. These are proper factors to consider when finding whether termination is in a child's best interests. *In re Olive/Metts*, 297 Mich App at 41-42. Therefore, we conclude that the trial court's findings regarding best interests were sufficient. *Id.*

In arguing that the trial court's findings were erroneous because it was unclear what standard of proof was applied, father is presumably referring to the following statement from the trial court: "And I'm taking all of those things into consideration in determining by a preponderance of the evidence, which is the standard, but I'll find by clear and convincing evidence that it is in this child's best interests to terminate parental rights." Thus, the trial court applied the preponderance of the evidence standard in finding that termination was in the child's best interests but it also found that the evidence satisfied the stricter clear and convincing evidence standard. Because the trial court made its findings regarding best interests under the preponderance of the evidence standard—which is the appropriate standard, *In re Moss*, 301 Mich App at 83—there was no error. Furthermore, a finding under the clear and convincing standard is necessarily also a finding under the preponderance of the evidence standard because the clear and convincing standard of proof is a higher standard than the preponderance of the evidence standard. *Foskett v Foskett*, 247 Mich App 1, 6-7; 634 NW2d 363 (2001).

We affirm.

/s/ Mark T. Boonstra
/s/ William B. Murphy
/s/ Jane E. Markey